

The Gas Use Tax Law contains an exemption for gas used in the production of electric energy. See 86 Ill. Adm. Code 471.125(a)(3). (This is a GIL.)

May 23, 2007

Dear Xxxxx:

This letter is in response to your letter received in the Department on February 2, 2006, in which you request information. The Department issues two types of letter rulings. Private Letter Rulings ("PLRs") are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. Persons seeking PLRs must comply with the procedures for PLRs found in the Department's regulations at 2 Ill. Adm. Code 1200.110. The purpose of a General Information Letter ("GIL") is to direct taxpayers to Department regulations or other sources of information regarding the topic about which they have inquired. A GIL is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120. You may access our website at www.ILTAX.com to review regulations, letter rulings and other types of information relevant to your inquiry.

The nature of your inquiry and the information you have provided require that we respond with a GIL. In your letter you have stated and made inquiry as follows:

I was given your name by one of the individuals in the excise tax department. I have a client who is considering expansion into your state. What we need to know is if natural gas purchased to produce Electricity which will be wholesaled is subject to any sales, use or excise tax?

DEPARTMENT'S RESPONSE

The Gas Revenue Tax Act imposes a tax on persons engaged in the business of distributing, supplying, furnishing or selling gas to persons for use or consumption and not for resale at the rate of 2.4 cents per therm of all gas which is so distributed, supplied, furnished, sold or transported to or for each customer in the course of such business, or 5% of the gross receipts received from each customer from such business, whichever is the lower rate as applied to each customer for that customer's billing period. See 35 ILCS 615/2 and 86 Ill. Adm. Code 470.110. Businesses that qualify as high impact businesses under Section 5.5 of the Illinois Enterprise Zone Act (20 ILCS 655/5.5) or certified business enterprises under Section 9-222.1 of the Public Utilities Act are exempt from the additional charges added to their gas bills as a pass on of the Gas Revenue Tax.

The Gas Use Tax Law imposes a tax on the privilege of using in this State gas obtained in a purchase of out-of-state gas at the rate of 2.4 cents per therm or 5% of the purchase price for the billing period, whichever is the lower rate. See 35 ILCS 173/5-10 and 86 Ill. Adm. Code 471.105.

Section 5-10 of the Gas Use Tax Law provides that the tax does not apply to gas used by business enterprises certified under Section 9-222.1 of the Public Utilities Act to the extent of such exemption and during the period of time specified by the Department of Commerce and Economic Opportunity.

The Gas Use Tax Law contains an exemption for gas used in the production of electric energy. However, this exemption does not include gas used in the general maintenance or heating of an electric energy production facility or other structure. See 86 Ill. Adm. Code 471.125(a)(3). The Gas Revenue Tax Act does not contain the same exemption. Sales of natural gas are not subject to Retailers' Occupation Tax or Use Tax.

If you require additional information, please visit our website at www.ILTAX.com or contact the Department's Taxpayer Information Division at (217) 782-3336. If you are not under audit and you wish to obtain a binding PLR regarding your factual situation, please submit a request conforming to the requirements of 2 Ill. Adm. Code 1200.110 (b).

Very truly yours,

Martha P. Mote
Associate Counsel

MPM:msk